

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4090 of 1997

with

CIVIL APPLICATION No 7037 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.PANDIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? Yes
3. Whether Their Lordships wish to see the fair copy of the judgement? No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge? No.

ADITI SURENDRA MODI

Versus

BJ MEDICAL COLLEGE

Appearance:

1. Special Civil Application No. 4090 of 1997
MR SV RAJU for Petitioner
Mr. K.T.Dave AGP for Respondent No. 1
MR DS NANAVATI for Respondent No. 2
SERVED BY DS for Respondent No. 5
2. Civil Application No 7037 of 1997
MR SV RAJU for Petitioner
SERVED BY DS for Respondent No. 1, 5
MRS VD NANAVATI for Respondent No. 2

CORAM : MR.JUSTICE S.D.PANDIT

Date of decision: 19/11/97

ORAL JUDGEMENT

Aditi Surendra Modi has filed the present petition mainly for a direction directing the respondents to give admission to the petitioner in the Second Term of First Year MBBS course at respondent no.1 medical college and other consequential reliefs. The petitioner had appeared for Higher Secondary Certificate Examination(HSC Examination) held in the month of March/.April 1996. When the result of the said examination was declared it was found that she secured 471 out of 650 marks and she had secured 404 out of 450 marks in science and mathematics. She had applied for verification of her marks. By the time admission for MBBS course were also going on. She applied for admission in the MBBS course before the authority. The authority took a decision that those students who had secured 405 and above marks in science and mathematical subjects were to be given admission in B.J.Medical College, Ahmedabad and those students who have secured less than that were to be admitted in Medical College, Baroda. The claim made by the present petitioner to verify her marks in HSC examination was not decided till then and therefore, she was given admission in Medical College, Baroda. She joined the Medical College, Baroda on 26.11.96 and started her studies for First Year MBBS. In the meantime, she had filed SCA No. 9522 of 1996 as regards verification of her marks and in that petition it was found on verification that she had secured 406 marks out of 450 marks. B.J.Medical College, Ahmedabad was joined a party to the said petition so also the authority giving admission for MBBS course. After the said decision, Dean, B.J.Medical College,Ahmedabad informed her by letter dated 4/5-6-1997 that she was eligible for admission in B.J.Medical College and that there were vacancies in the said medical college. She was also informed that her shifting to the said college does not guarantee granting her terms as her attendance in the First Year MBBS at medical college,Baroda could not be accepted. When she approached the Dean, B.J.Medical College, she was informed that she would be taken as a fresh student. By that time she had completed two terms in the medical college at Baroda. She had appeared in the first term examination on 27.2.97 and she was declared successful in the said examination and stood third in the said examination. She therefore, approached this court. During the pendency of this petition, she also appeared for second term of the First Year MBBS examination held on 17.7.1997. She has passed that

examination and she has also stood 3rd in the said examination.

2. The contention of the respondent Gujarat University is that as per the Rules of the Medical Council, no migration is permissible during the 18 months course and the petitioner would be given admission as per letter of the Dean , B.J.Medical College, Ahmedabad dated 4/5-6-96 as a fresh student. It is further brought to my notice that as per rules of the Medical Council, migration is not a right of a student and the petitioner could not be granted migration in the midst of 18 months terms of First Year MBBS course.

3. There is no dispute of the fact that when the result of HSC examination of the present petitioner was declared, it was found that she had secured 404 marks out of 450 marks. However, on revaluation of her answer books it was found that she had secured 406 out of 450 marks. If she was given correct and proper marks at the time of declaration of the result of her HSC examination, then in the natural course, she would have secured admission in the B.J.Medical College on merits. She has been denied admission in the B.J.Medical College, Ahmedabad on merits for no fault of her own.

4. The petitioner is a girl student. Her parents and other family members are in Ahmedabad and she finds it very difficult to continue her MBBS course at Baroda. No doubt as the position stands today, she has already completed two terms of the First Year MBBS course and she has also become successful in the said two terms of the examinations. Admittedly, the examination for third term of first MBBS is going on at present and is likely to be completed in the next week. Therefore, in the circumstances it would not be either proper or just to order her shifting from Medical College, Baroda to B.J.Medical College, Ahmedabad where the second term course of MBBS is likely to commence on and with effect from 1.12.97. In the circumstances, instead of directing the respondent to give admission to the present petitioner in the first MBBS course by treating her admission as in November 1996, if the direction is given to give her admission in 2nd MBBS on her passing first MBBS, then it would be just and proper . Because there will be a question regarding her clearance of first two terms in another medical college (viz.. Medical College of Baroda) of another University and whether her attendances in the medical college, Baroda could be treated as her attendance in B.J.Medical College,

Ahmedabad though curriculum for the MBBS course is the same. Then though she has appeared in her second term examination in the First Year MBBS course in Medical College, Baroda, she will have to appear for her second term examination in the First Year MBBS in B.J.Medical College, Ahmedabad. In view of the peculiar circumstances in which the present petitioner has been denied admission for MBBS course in B.J.Medical College, Ahmedabad for which she is not personally responsible, it would not be either just or proper to ask her to suffer further by continuing her course in the medical college, Baroda when she was entitled to get admission in B.J.Medical College, Ahmedabad on merits and more particularly when he has been denied admission in B.J.Medical College, Ahmedabad for no fault of her own. In the circumstances, it would not lie in the mouth of anybody to say that she should be ordered to continue to suffer the hardship which she has already suffered for no fault of her own. I therefore, direct that the respondent no.1 should give admission to the present petitioner in the Second Year MBBS course in case, if she happens to clear her second term examination of First MBBS course in medical college, Baroda, as a regular student in regular batch and for that purpose the respondent no.1 medical college, Baroda should permit her to leave the said college so as to enable her to join B.J.Medical College, Ahmedabad in the second Year MBBS course.

I am granting this relief because of the changed circumstances which have occurred during the pendency of this petition though such a relief is not specifically prayed for by the petitioner in the petition. Such a relief is also required to be granted in order to meet the ends of justice and to do justice to the parties. Respondent no.2 University should issue necessary eligibility certificate and do all other necessary formalities to see that the petitioner gets admission in the second year MBBS course in B.J.Medical College, Ahmedabad on her passing the examination of First Year MBBS in medical college, Baroda, as a regular student in regular batch.

Thus the Rule is made absolute in the aforesaid terms. No order as to costs.

(S.D.Pandit.J)

